

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DOLORES RAJEVICH and U.S. POSTAL SERVICE,
POST OFFICE, Wilmington, Del.

*Docket No. 96-2036; Submitted on the Record;
Issued May 20, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability causally related to her July 28, 1993 work-related injury.

The Board has duly reviewed the case record on appeal and finds that appellant has not met her burden of proof in establishing that she sustained a recurrence of disability causally related to her July 28, 1993 work-related injury.

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her recurrence of disability and her July 28, 1993 employment injury.¹ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.²

In this case, the Office of Workers' Compensation Programs accepted that appellant sustained a work-related injury to her right knee while in the performance of duty on July 28, 1993.

On June 16, 1995 appellant filed a claim for recurrence of disability commencing June 9, 1994 alleging that her right leg gradually became worse after her July 28, 1993 work-related injury. In a decision dated September 25, 1995, the Office denied appellant's claim for recurrence of disability on the grounds that appellant "did not submit any medical documentation to support the recurrence (of disability)." In a decision issued on April 25, 1996 and finalized on

¹ *Lourdes G. Davila*, 45 ECAB 139 (1993); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

² *Louise G. Malloy*, 45 ECAB 613 (1994).

April 26, 1996, the Office Branch of Hearings and Review, upon review of the written record, denied appellant's claim on the grounds that appellant submitted no medical evidence to support her claim that the condition for which she sought treatment in January 1994 and in subsequent months was causally related to her July 28, 1993 work-related injury.

In treatment notes from January through May 16, 1994, Dr. William Newcomb,³ a Board-certified orthopedic surgeon, stated that appellant complained of right medial knee pain that had been building up over the last several years, that she needed a brace when she bowls, that she could not remember any injuries, and that her condition had worsened significantly in May 1994. He noted upon examination some degenerative changes in her posterior femoral compartment of her right knee, joint spacing in the medial compartments, spurring in both knees, and tenderness from the adductor tubercle to the tibial plateau. In a May 19, 1994 medical report, Dr. Newcomb stated that appellant had a probable torn meniscus in her right knee noting that she recalled "a minor twist that occurred several months before." He opined that it was possible that the twist "may have had some relation to the present problem," but that he could not "state any relationship with medical probability." In a medical report dated June 12, 1994, Dr. Newcomb stated that appellant had had arthroscopic surgery on her right knee and that she was to remain off work until reevaluated on July 21, 1994. He further noted on June 21, 1994 that appellant had had a Grade III and IV chondromalacia of the femoral groove, Grade II and III of the medial femoral condyle and a partial medial meniscectomy. Appellant underwent a regimen of physical therapy for her knee and was released to return to her normal duties for up to five hours a day on August 11, 1994.

In an attending physician's report dated October 23, 1995, Dr. Newcomb stated that he first treated appellant on January 17, 1994, that she had right knee compartment arthritis, torn meniscus and chondromalacia. He stated in the section of the form regarding the history of the pain that appellant had a gradual onset of right knee pain.

These reports are not sufficient to meet appellant's burden of proof as Dr. Newcomb did not offer an opinion as to whether appellant's current condition and disability were causally related to her accepted employment injury. In fact, in a May 19, 1994 medical report, Dr. Newcomb stated that he could not "state any relationship with medical probability" that appellant's alleged minor knee twist that occurred several months earlier had any relationship to her current medical condition. An award of compensation may not be based on surmise, conjecture or speculation or upon appellant's belief that there is a causal relationship between her condition and her employment. To establish causal relationship, appellant must submit a physician's report in which the physician reviews the factors of employment identified by appellant as causing her condition and, taking these factors into consideration as well as findings upon examination of appellant and appellant's medical history, states whether these employment factors caused or aggravated appellant's diagnosed conditions and present medical rationale in

³ Appellant was seen by an associate of Dr. Newcomb's on January 24, February 1, June 24, and July 8 and 27, 1994.

support of his opinion. Appellant failed to submit such evidence and therefore failed to discharge her burden of proof.⁴

The decisions of the Office of Workers' Compensation Programs dated April 25, 1996 and finalized April 26, 1996 and September 28, 1995 are hereby affirmed.

Dated, Washington, D.C.
May 20, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member

⁴ *Donald W. Long*, 41 ECAB 142, 146-47 (1989).